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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Rulemaking to Amend Parts 1, 2, 21 and )  
25 of the Commission's Rules to )  
Redesignate the 27.5 - 29.5 GHz )  
Frequency Band, to Establish Rules and )  
Policies for Local Multipoint )  
Distribution Service and for Fixed )  
Satellite Service )

CC Docket No. 92-297

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COMMENTS

Puerto Rico Telephone Company ("PRTC"), by its attorneys,  
hereby comments on the Commission's Fourth Notice of Proposed  
Rulemaking in the captioned proceeding (FCC 96-311, released July  
22, 1996) ("NPRM").

**I. LECS SHOULD BE PERMITTED TO OBTAIN LMDS LICENSES IN THEIR  
TELEPHONE SERVICE AREAS**

The NPRM asks whether local exchange carriers ("LECs") and  
cable operators should be permitted to obtain LMDS licenses in  
the geographic areas they serve. NPRM ¶ 105. The Commission  
states that one of the "key objectives" of the Telecommunications  
Act of 1996 ("1996 Act") is to "expedite the introduction of  
competition to incumbent LECs and cable companies," and therefore  
it must obtain comment on how its "policies towards LMDS  
eligibility would best promote the competitive objectives of the  
1996 Act." Id.

Nothing in the 1996 Act requires that the Commission prohibit LECs from becoming LMDS licensees. In fact, allowing LECs the option of using LMDS to compete with incumbent cable operators in the provision of video programming would promote one of the objectives of the 1996 Act. In contrast, as the Commission acknowledges, "a bar on eligibility could prevent LECs and cable operators from using LMDS to compete against each other more effectively and rapidly or to provide new services not now offered by any firm." NPRM ¶ 125.

Although the 1996 Act allows LECs to compete with incumbent cable operators through use of "open video systems," the technology required for OVS is only in the experimental stage. In contrast, the NPRM states that LMDS equipment is "relatively close to marketability" (NPRM ¶ 125), and the Commission has already licensed one LMDS provider, CellularVision, which is currently using its LMDS spectrum to provide video programming in the New York metropolitan area. LMDS would thus allow LECs to enter the video programming market in competition with incumbent cable operators more rapidly.

If the Commission does adopt eligibility restrictions for LECs, any restriction imposed on LECs must apply equally to incumbent cable operators. If LECs are not permitted to obtain LMDS licenses in their telephone service areas, allowing cable operators to obtain LMDS licenses in their service areas would strengthen the cable operators' monopoly in the provision of video programming services while eliminating the most likely

candidates for providing effective competition in that market -- the LECs. This would frustrate the objectives of the 1996 Act rather than fulfill them.

Likewise, any ownership restrictions imposed by the Commission on LECs and cable operators should also be imposed on holders of 2 GHz multichannel multipoint distribution service ("MMDS") licensees. These licensees already have the ability to provide wireless video programming service, and should not be permitted to attain a monopoly in that market by obtaining the LMDS license as well. Therefore, unless the Commission adopts an "open entry" licensing plan for LMDS, MMDS licensees should not be permitted to obtain LMDS licenses in their MMDS service areas.

As an alternative to barring LECs and cable operators from LMDS eligibility, PRTC would support the Commission's proposal of limiting LEC participation in LMDS to the provision of no more than a certain percentage of non-video programming, and limiting cable participation in LMDS to the provision of no more than a certain percentage of video services. NPRM ¶ 131. While PRTC agrees with the Commission that this option may impair the deployment of LMDS as a market-driven flexible broadband service, it is preferable to the complete elimination from eligibility of those classes of providers that are best able to cause LMDS to become a competitive service.

The Commission should not be concerned that LECs would pay for LMDS spectrum at auction simply to warehouse it. NPRM ¶ 130. Even if LECs wanted to do so, sitting on LMDS spectrum would not

give them the ability to forestall local competition to any great degree. Therefore LECs must put into operation any LMDS spectrum they obtain in order to become more effective players in the competitive markets created by the 1996 Act.

If the Commission is concerned with potential warehousing, it could impose buildout requirements on LMDS licenses just as it has in other services. Auctioning plus buildout requirements would be sufficient to prevent any warehousing that might otherwise occur. It would not make economic sense for a LEC to spend the substantial amount that will be required to obtain an LMDS license at auction, sit on it, and hand it back when the buildout period expires just to stall one local competitor for a few years.

**II. THE COMMISSION SHOULD DESIGNATE THE  
31.0-31.3 GHz BAND FOR LMDS**

The Commission should adopt its proposal to designate, on a primary, protected basis, the 31.0-31.3 GHz band to LMDS. NPRM ¶ 95. This would give LMDS licensees the full, unrestricted use of the spectrum that they lack in the 150 MHz band that they share with MSS Feeder Links. However, the 31 GHz block should be treated as a separate block and licensed independently of other LMDS spectrum. This would allow for more potential LMDS providers and increased competition.

For the above reasons, the Commission should allow LECs to obtain LMDS licenses in their telephone service areas, and should designate the 31.0-31.3 GHz band to LMDS.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sue W. Bladek", written over a horizontal line.

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